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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

CADE LEWIS VELARDE,

Defendant and Appellant.

G040623

(Super. Ct. No. RIF100985)

O P I N I O N

Appeal from a judgment of the Superior Court of Riverside County,
Stephen Graham, Judge. (Retired judge of the Riverside Super. Ct. assigned by the Chief
Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Athena Shudde, under appointment by the Court of Appeal, for Defendant
and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Gary W. Schons, Assistant Attorney General, Lilia E. Garcia and
Marilyn L. George, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Cade Lewis Velarde was convicted of multiple counts of kidnapping, false imprisonment, criminal threats, stalking, and related charges against four victims, relating to incidents in 2000 and 2001. Defendant challenges the admission of uncharged misconduct evidence and claims the trial court committed instructional and sentencing error. We find defendant's arguments to be without merit and affirm.

I

FACTS

In an amended information, defendant was charged with 20 counts relating to four victims. Counts one through twelve related to victim Jill R. Defendant was charged with kidnapping for the purpose of committing sodomy (Pen. Code, § 289,¹ count one); assault with the intent to commit sodomy (§ 220, count two); assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(1), count three); inflicting corporal injury resulting in a traumatic injury (§ 273.5, subd. (a), count four); unlawfully violating the personal liberty of Jill R. by force or threat of force (§ 236) on April 15, 2000 (count five), on April 16, 2000 (count seven), on May 26, 2000 (count eight), and on or about June or July 2000 (count eleven); making a criminal threat (§ 422) on April 16, 2000 (count six), and May 26, 2000 (count ten); committing a misdemeanor battery upon Jill R., defendant's cohabitant (§ 243, subd. (e)(1)), count nine); and stalking (§ 646.9, subd. (a), count twelve).

Counts 13 and 14 related to victim Beata T. Defendant was charged with one count of violating Beata T.'s personal liberty by force or threat of force (§ 236, count 13) and stalking (§ 646.9, subd. (a), count 14).

Counts 15 through 17 related to victim Catherine A. Defendant was charged with kidnapping by use of force or fear (§ 207, subd. (a), count 15); unlawfully

¹ Unless otherwise indicated, subsequent statutory references are to the Penal Code.

violating Catherine A.'s personal liberty by force or threat of force (§ 236, count 16) and stalking (§ 646.9. subd. (a), count 17).

Counts 18 through 20 related to victim Amber C. Defendant was charged with kidnapping by use of force or fear (§ 207, subd. (a), count 18); unlawfully violating Amber C.'s personal liberty by force or threat of force (§ 236, count 19), and making a criminal threat (§ 422, count 20).

Prior to trial, the prosecution sought to present evidence of uncharged acts pursuant to Evidence Code sections 1108, 1109, and 1101, subdivision (b). The seven uncharged acts, involving different women, covered a period from 1988 to 1999. The prosecution argued these acts were relevant to show propensity for domestic violence and sexual misconduct, as well as defendant's intent, lack of mistake, knowledge, motive, and common plan or scheme. The defense objected, arguing that the evidence the prosecution sought to introduce was remote, unnecessary, unduly prejudicial, and irrelevant to the charged offenses. Additionally, the defense argued the evidence was cumulative of the expected evidence and unduly time consuming.

The trial court concluded that the evidence was probative and far outweighed any prejudice to defendant, finding that the evidence demonstrated a "long-standing, unremitting course of behavior which is so thoroughly riddled with similar features [from] one instance to the next that it's extraordinarily probative." To limit the expenditure of time, however, the court ordered the prosecution to limit the uncharged acts to a total of four, and to limit the testimony to the victims, unless additional corroboration was unavoidable. Ultimately, three witnesses testified about defendant's prior acts.

Laurel G. (Prior Act Witness)

Laurel G. met defendant, who was her neighbor, in 1984 or 1985, when she was 11 years old. Defendant was four years older. They began dating when she was 14

and defendant was 18 or 19. The relationship lasted two years. They dated for approximately 10 months before engaging in sex, and prior to that point, defendant had not been violent.

In October 1988, when Laurel was 15, the couple attended a party at a friend's house. Defendant hit Laurel for the first time, knocking her down and causing a fat, bloody lip. He told her that she had made him mad. Later, he kept her in his car for two hours before she was able to get out and run home.

Afterward, defendant began hitting Laurel regularly, triggered by what Laurel characterized as a variety of mundane reasons, from the way she wore her hair to something she said. Defendant tended to hit her below the neck, where the bruises would be less visible. The violence also escalated to include sexual assault on at least three occasions.

In addition to hitting Laurel, defendant regularly called her names and said she deserved everything she got from him. Laurel did not talk about the abuse to anyone because defendant threatened to harm her, or her family, if she did so. The continued abuse took its toll on Laurel, resulting in depression, a suicide attempt, and cutting behavior.

Laurel's parents made arrangements for her to go out-of-state one summer to get away from defendant. Laurel tried to break up with him prior to her departure, resulting in a beating that left her bloody. When she returned, she did whatever she could to avoid defendant and worked to reclaim the friends she had lost during her relationship with defendant.

Jacqueline P. (Prior Act Witness)

Jacqueline met defendant in 1995 or 1996, when she worked as his supervisor at a facility for developmentally disabled adults. Initially they were friends, then began dating, resulting in an intimate relationship about a month later. Soon after,

defendant became very jealous and possessive of Jacqueline, monitoring her constantly. Defendant gave Jacqueline a pager and if she did not answer his pages immediately, he accused her of flirting with other men. Defendant also watched Jacqueline at work, and if she spoke to another male employee, he accused her of acting “slutty.”

Soon after, defendant moved himself into Jacqueline’s apartment without invitation. He was there constantly, watching Jacqueline as she dressed and telling her what clothes she could wear. Later, defendant began monitoring Jacqueline’s diet and took away her birth control pills, telling her that they weren’t “Christian.”

During this period, defendant became interested in a violent form of martial arts that focused on ways to kill one’s opponents. After taking lessons or whenever he became angry at her, he showed Jacqueline ways he could kill her with weapons or his bare hands.

About three months into their relationship, defendant physically assaulted Jacqueline for the first time, after an argument in which she asked him to move out. Defendant refused, telling her that things were not going to change. He would grab Jacqueline’s arms and push and shove her. Jacqueline was afraid of what defendant could do.

Approximately one month later, defendant attempted to rape Jacqueline, but she was able to kick him in his genitals and get out of the house. About one month after that incident, he attempted to forcibly sodomize Jacqueline after pulling down her pants, but she was again able to escape the house. Defendant forced Jacqueline to have sex with him at least five times during their relationship, which lasted about a year. On each occasion he reminded her that he had a knife and could break her neck with his hands.

Jacqueline finally got defendant to move out by boxing up his belongings and insisting that he leave. An argument while Jacqueline was trying to push defendant out resulted in defendant pushing Jacqueline into a glass coffee table. She had a cut on

the back of her leg and wanted to go to the hospital, but defendant told her that it was unnecessary and she was exaggerating. Jacqueline left the house, and when she returned, discovered that her dog was missing. Defendant had the dog and threatened to kill him unless she got back together with him. Jacqueline told him she had friends who would find him and take him to jail, and defendant returned the dog a few hours later, acting as if it had been a joke. While Jacqueline succeeded in getting defendant to move out, she continued to see him driving by. Defendant also continued to follow her around at work, but she lost her job because of him shortly thereafter.

Cynthia C. (Prior Act Witness)

Cynthia was a consultant who met defendant through a consulting job with his employer. Defendant seemed to Cynthia to be a caring person, and he presented himself as a devout Christian who did not drink or use drugs. When they began dating in September 1996, Cynthia had known defendant for about two years.

On one occasion, the couple had dinner and played pool with a married couple who were friends of Cynthia. Afterwards, defendant accused Cynthia of flirting with the husband. Cynthia, shocked, wanted to call her friend and ask if she thought Cynthia had acted inappropriately, but defendant forbade it, saying the friend would just lie. Cynthia and defendant then had a long conversation about relationships, and defendant said that God had put him and Cynthia together and they should go to Las Vegas and get married. They had been on two dates at the time, and Cynthia felt that would be a crazy thing to do.

On their next date, Cynthia accidentally introduced defendant by the name of an ex-boyfriend, Chad, rather than by defendant's name, Cade. Cynthia characterized this as a slip of the tongue and immediately apologized, and defendant said nothing more about it at the time. Later, however, defendant accompanied Cynthia to her room at her parents' home and began questioning her about Chad. He demanded to see any letters or

pictures related to Chad, and began pulling out drawers and going through her belongings. He took items such as address books, journals, and photographs. He also went through her clothing, and put all the items to which he objected in a large garbage bag. As he was going through her clothing, defendant would hold up certain items and make condescending comments about them. Cynthia felt paralyzed by defendant's behavior. He said that if she was going to be a Christian girl and his girlfriend, she should not dress that way. Defendant took everything he did not want Cynthia to have and put it in his car. At a later date, defendant had Cynthia go through some items and destroy letters and pictures.

Within a couple of weeks after this incident, Cynthia described the relationship as "getting really ugly." She knew she was in trouble and was afraid. Nonetheless, Cynthia subsequently moved into defendant's house, partly because she wanted to get out of her parents' home. She began losing control over every aspect of her life.

Defendant monitored Cynthia's movements, checking the odometer on her car when she went to work or class. He searched her backpack. Defendant gave her a cell phone and directed her to answer it, regardless of the interruption. He ultimately started driving her everywhere, forbidding Cynthia from going anywhere without him. Defendant persistently accused Cynthia of looking at other men, and told her to walk with her head down if she could not stop doing so.

Because defendant monitored Cynthia's phone calls, she stopped being an Alcoholics Anonymous sponsor to protect the privacy of other members. She stopped seeing her friends, because she knew defendant would keep her up all night asking questions when she returned. Defendant once accused her of cheating on him because she was taking a shower in the afternoon. Thereafter, she was only allowed to shower when he was home, and he required her to leave the door open so she could not make any phone calls.

Defendant would tell Cynthia about his love of martial arts and how he could hurt people. Defendant also kept a gun in the house. On one occasion when Cynthia was in bed, defendant took a 16- to 18-inch knife out from under the bed and began polishing it as he told her how easily he could kill someone with it. Cynthia took that as a warning. Requests for sex often followed defendant showing Cynthia the knife. She submitted to his demands for anal sex even though she did not want to.

Defendant continually pressed Cynthia to marry him, and she eventually agreed, hoping that demonstrating her level of commitment would reduce the pressure. Nothing changed, however, after the ceremony.

Cynthia described herself as feeling as if she were going crazy. She lost weight, was deprived of sleep, and felt sick. On one occasion, defendant held out her car keys and told her that she could leave if she wanted to, but she was too frightened to take the keys. Defendant then punched a wall twice, cracking it. After that, she knew she could not leave if he was present.

Cynthia eventually reached the point where she felt the only way to escape from defendant was “just go to sleep,” and she planned to take a bottle of Tylenol P.M. She called her AA sponsor to say goodbye, but the sponsor drove over and picked Cynthia up. She then stayed with a number of friends before returning to her parents’ home.

Jill R. (Counts One through Twelve)

Jill met defendant in the fall of 1999 at their workplace. Their relationship began as one of friends and coworkers, and became a dating relationship later. Among other things, defendant talked about his practice of martial arts, describing it as aggressive and deadly.

In February 2000, Jill, who was thinking of leaving her job, had lunch with defendant. Jill (who had a psychology degree) thought defendant seemed depressed, and

she was concerned that he might be suicidal. Defendant asked Jill back to his house, and they talked until late that night. As she had a backpack with some clothing in her car, she stayed the night when defendant convinced her it was too late to drive. The next day, they continued talking, and defendant again asked Jill to stay. Feeling sorry for him, she agreed. Jill ended up staying about two weeks.

As time progressed, defendant became agitated whenever Jill talked about leaving, and eventually he simply refused to allow her to go. He began to block the door and would say she needed to stay for a bit longer. Defendant also accused her of sleeping with other staff members at their workplace.

Around the middle of March, defendant agreed to let Jill leave, but when she tried, she found that one of her tires was flat. Jill was afraid of defendant by this point. After she bought a new tire, she noticed that another was almost flat. Defendant said he had a mechanic friend who could take care of it. On the way to the mechanic, Jill's car started smoking and smelled of burnt oil. They made it to the tow yard, which was owned by defendant's father. Jill's car remained there for more than a month. Defendant told Jill that his friend was working on her car as a favor and would get to it when he could. Prior to going to defendant's house, Jill had not experienced any problems with her car.

The situation deteriorated thereafter, as defendant became increasingly controlling of Jill. When Jill said that her brother could come pick her up, defendant threatened to beat him up. Jill said defendant would be arrested for assault, and defendant responded that he would not be if her brother was beaten to the point where he did not know who he was. Defendant told Jill that if she left, he could go after her family and friends, and he took information such as addresses from her backpack and locked them away. He also told Jill about how his "ex-fiancee" Cynthia had disappeared from his house one day, and no one was going to hurt him like that again.

When defendant went to work, he told Jill that he had friends driving by to make sure that she was there, and if she left, he would go to the homes of her brother and her ex-boyfriend. Jill described defendant's house as run down, with brown paper covering the windows. Defendant threatened Jill with his martial arts prowess, demonstrating what he could do with various weapons. Jill was only allowed to contact her family with defendant listening to her calls. She did not inform them about what defendant was doing to her because of the threats to her family.

At times, defendant physically restrained Jill when she tried to leave, pinning her down and taking all of her clothing, leaving her covered in bruises and marks. After defendant restrained Jill, he wanted to have sex, and even though she refused, defendant told her she had to. This occurred several times a week. Defendant told Jill she could not shower when he was not home, because that meant someone had come over and Jill had had sex with them. Jill felt anxious and depressed, and eventually lost about 15 pounds.

Jill was allowed out of defendant's house at some points, but always in defendant's company. Defendant would search Jill after each time she had been out in public. He also continued to threaten her family if she did not behave. Although Jill was able to visit her parents alone, she did not tell them what defendant had been doing to her. She was ashamed, and frightened of what defendant might do because he had the addresses of her friends and family. She told her ex-boyfriend some of what had been happening.

Upon leaving her parents' home, Jill planned to return to get her car and then leave again. She had managed to reach an agreement with defendant that she could leave, and "everything would be over." When she called defendant's father, the owner of the tow yard, he informed defendant that she was coming, and he called Jill (her parents had given her a cell phone) when she was nearby. They met off the 91 freeway, and she

left the rental car she was driving in the parking lot, permitting defendant to drive her to the tow yard. Upon arriving at the tow yard, however, nobody was there.

Once back in defendant's vehicle, Jill asked him to take her back to her rental car, but despite Jill's repeated protests, defendant drove south on Interstate 15 instead, taking Jill to an isolated area. After defendant parked, he told Jill she had to have sex with him and then she could leave. When Jill refused, defendant became angry and started yelling and screaming at her, eventually grabbing her throat and throwing her between the seats. Jill attempted to fight, but defendant said she had to have sex with him, then said she had to have anal sex with him. Defendant was strangling Jill to the point that she was having difficulty breathing. She continued to scream and fight, eventually escaping the car. Defendant followed her, grabbing her shirt, which came off as she fell down. Defendant then became apologetic, promising to take her back to her car. Although Jill did not know what caused defendant to change his demeanor, she had told him that his actions were rape.

Because they were in an isolated area, Jill felt she had little choice except to get back in defendant's vehicle. Defendant kept apologizing, but took Jill back to his house rather than to her rental car. Defendant protested that he needed sleep and would then take her back to her car. The same pattern continued into the next day, with defendant promising he would find out when the tow yard was open, but he did not take Jill back to the rental car as she had asked.

The following day was a Monday, and defendant left Jill alone in the house while he went to the tow yard. He returned "screaming" that Jill's father and her ex-boyfriend were there asking questions. A short time later, both men and a police officer arrived at the house and knocked at the door. Defendant kept Jill pinned down on the floor of the bedroom, telling her that if she made any noise, he would hurt her father and ex-boyfriend before the police officer could do anything. Eventually, they left. Shortly

thereafter, defendant claimed they had made him lose his job and he was going to get a restraining order against them.

Defendant forced Jill to call her father and tell him that everything was fine, listening in on the call. Jill's father said he had filed a missing person report, and that she had to speak to a police officer. Eventually she did, in defendant's presence. Defendant told Jill that if she did not convince the police that everything was fine, he was going to go after her father and ex-boyfriend.

Thereafter, defendant watched Jill constantly. He would yell and scream at her that it was her fault he had lost his job. Jill took several thousand dollars in cash advances on credit cards and gave the money to defendant. The situation continued to worsen, with defendant forcing Jill to have sex with him and physically abusing her. Jill tried to jump out of defendant's vehicle several times, but he grabbed her by the throat and pulled her back.

Jill managed to secretly write a letter to her parents, warning them about defendant. She did not mention the sexual abuse in this letter, wanting it to seem "harmless" in case defendant found it. When she tried to leave, on one occasion, defendant tried to tie her up with a belt.

Finally, in early July 2000, Jill managed to call her parents from a pay phone. She said she had to get out and told them to protect themselves, afraid defendant would come after them. She returned to the house. Approximately a week later, Jill's ex-boyfriend and another friend came to the house and rescued her.

Beata T. (Counts 13 and 14)

In August 2000, Beata T. met defendant at their workplace. They also attended the same church. Defendant asked Beata about her past relationships and they shared some stories about their past. Defendant said he had a former girlfriend who kept calling him.

They went on a breakfast date in early September, and at the restaurant, there was a man sitting behind defendant. Defendant asked Beata why she was staring at him, and whether she knew or liked him. Defendant said he would confront the man, but Beata said she did not want any trouble, and they left.

Instead of taking Beata home, he took her to a park. They stayed for hours. Beata asked defendant to take her home several times, but he refused. Beata said she would walk home if he would not drive her. Defendant exited the car and went to the passenger side, blocking the door so she could not leave. Beata began to cry and said she would scream if defendant would not take her home. Eventually, defendant did so.

After that, defendant began appearing, unannounced and uninvited, at Beata's home and work. Beata saw him driving by her house on occasion, and once she saw him at a gas station. Defendant tried to talk to her, but she just waved and drove away. Several days later, she saw him at a grocery store near her house. Defendant approached her, but Beata, feeling uncomfortable, left.

Beata next saw defendant driving behind her, honking his horn at her. When Beata stopped at a traffic signal, defendant left his vehicle and approached her door. When the light turned green, Beata drove away, but defendant followed her, attempting to force her off the road. She stopped the car. Defendant approached and spoke to her through the window, asking if she was still with her ex-boyfriend, and asking her to go out with him again. Beata saw a small blade in defendant's hand, so she lied and told defendant she loved him and would go out with him to get him to leave, which he did.

Sometime thereafter, Beata drove to the home of an old boyfriend named Sam. Defendant walked through a gate and began questioning her about Sam. Beata had never told defendant where Sam lived. She told defendant to leave, which he eventually did. Later that night, Beata and Sam heard noise in the garage. When they went to check, she saw a vehicle, which she believed to be defendant's, driving away.

The last time Beata saw defendant was in November 2000, in a shopping mall food court. He approached her and asked for a ride home, which Beata refused before leaving. Beata later learned that her mother had driven defendant to the mall after he called and asked for a ride, claiming his car had been stolen.

Catherine A. (Counts 15 through 17)

Catherine, like many of defendant's other victims, met defendant at work in the spring of 2001. Although their relationship began as a professional one, they eventually became friends. Catherine was impressed by defendant's looks, aspirations, and religious nature. They began dating and were discussing marriage and children just weeks later.

Catherine was living with her mother, grandmother and brother. After spending a few nights at the house, defendant essentially moved in, claiming that he had nowhere else to go. Once defendant moved in, he began to take over Catherine's life. He did not want her going anywhere or calling anyone without him present. While she was at work, he called her constantly, asking what she was doing, if she was with any men and if she was flirting with them. He told her that if she did not stay on the phone with him, he would create trouble at her job. Defendant periodically took away her cell phone, checking to see who had called. When he returned it, he told Catherine she was only allowed to take calls from him.

Defendant constantly brought up the issue of looking at other men, telling her to keep her head down when they were in the car. If she looked up, he accused her of looking at or flirting with other men. He accused her of lusting after men at every turn, including waiters in restaurants, on television, and other random locations, including church. Defendant made Catherine wear conservative clothing, and wanted her listen to tapes about his belief that women should be subservient to men.

In late August or September of 2001, Catherine became pregnant. Defendant would stay at her side constantly, threatening her continually. He threatened to take the child away if she did not behave as he wished. He also threatened to “take care” of her family if she did not comply. Catherine was aware, by this time, of defendant’s affinity for martial arts, and she believed his threats. She wanted out of the relationship and for her family to be safe.

Because of a heart condition, Catherine’s pregnancy was high risk. Defendant’s mistreatment of her included lengthy arguments, which kept her up late at night, leading her to feel exhausted and sleep-deprived. Defendant also wanted Catherine to take herbal supplements instead of her prescribed medication.

On their way to church one Sunday, Catherine and defendant argued about Catherine’s desire to see one of her girlfriends. Instead of driving to church, defendant drove to Interstate 15 and said they would drive for as long as it took to end the argument. Catherine asked him to stop and let her out, but defendant refused. When she tried to use her cell phone, defendant took it away and threw it in the back seat. Catherine was terrified, but she finally persuaded defendant to stop so she could get a drink and use the bathroom. Before they left, she told defendant she would not see the girlfriend, which seemed to calm him down.

Later that same night, in their bedroom, they argued again. Defendant became very angry and tense. Defendant stood in front of the bedroom door and refused to let Catherine leave. He made threats about hurting Catherine’s family and their unborn child, and told her she could not get through the door if she wanted too. Fearing the baby might be hurt, Catherine did not try to leave. (These two incidents formed the basis of the kidnapping and false imprisonment charges, see *False Imprisonment as a Lesser Included Offense, post.*)

Catherine, with the help of family members, eventually forced defendant out of the house. Although he continued harassing her and threatening any other man in

her life, once Catherine threatened to obtain a restraining order, defendant finally left her alone.

Amber C. (Counts 18 through 20)

Amber, unsurprisingly, met defendant at work, in the fall of 2001. They became friends, with work and religion in common. They soon began dating. Defendant began spending nights on the couch at Amber's apartment, and after several nights, Amber asked defendant to go. He would leave and then reappear with an excuse why he could not go home. He then began following her home.

Defendant accused Amber of illicit thoughts and behavior regarding her male coworkers. Amber did not tell anyone about defendant because he had a good reputation and she did not think she would be believed.

One evening at the end of November, defendant and Amber were on an errand, heading to Riverside. Defendant asked Amber if he loved her, and because of the way he was behaving, she said yes. Defendant said they should get married because that is what the Bible said, and then began crying, in what Amber described as "some sob story." At that point, Amber realized they were not headed to Riverside, but on Interstate 15 headed to Las Vegas. Defendant said they were going to get married. Amber said they were not, and asked him to stop the car. Defendant refused to stop and drove them to a courthouse in Las Vegas.

Outside the courthouse, defendant made Amber write and sign a note saying that he had not hurt her and that she would not make false accusations against him. Amber began to cry, stating that she did not want to get married and wanted to go home. Defendant displayed a knife that he spun around, telling Amber that if she ran, she would be just another dead whore in an alley. Amber believed defendant's threats and that she was at his mercy.

Amber went into the courthouse, and they obtained a license and had a civil ceremony at the clerk's window. Amber cried during the ceremony. Afterward, they went to a hotel, where defendant told Amber to take off her clothes. She refused, and defendant took her clothes, saying that she would not leave if she was naked.

The next day, they drove to defendant's sister's home in Riverside. Defendant took the keys when he got out of the car, telling Amber to stay. Amber tried to escape, but defendant pushed her back in the car, telling her to stay or she would get hurt. They later went to Amber's apartment, where defendant ransacked her belongings, tearing up cards and letters from past boyfriends, photos and videotapes. He threw away her jewelry. Defendant used Amber's e-mail account to send messages to every male in her address book, stating that she was married and happy. Later, defendant, stating it was time to consummate the marriage, raped Amber.

In a pattern similar to his past victims, defendant assumed total control of Amber's life, prohibiting her from talking to anyone else. He watched her constantly, and listened in on calls to her parents. In public, defendant persistently accused Amber of having lustful thoughts. He reminded her that she was a married woman and the Bible said that married women were to be submissive to their husbands. Because of defendant's proficiency in martial arts and his weapons, Amber was afraid of him.

Defendant told Amber about Catherine and her pregnancy, and Amber was in the car when defendant stalked Catherine. Defendant made Amber go to Catherine's doctor's office to learn about her appointments, and called Catherine's grandmother to find out when the baby was due. He told Amber he would kidnap the baby and take it to Mexico. Eventually, Amber was able to call 911, and told the police officers some of what she had experienced with defendant.

Verdict and Sentencing

Defendant was found not guilty on count one, kidnapping for the purpose of committing sodomy, against Jill R., but found guilty of the lesser included offense of simple kidnapping (§ 207, subd. (a)). Defendant was found guilty as charged on counts two through twenty.

Defendant was sentenced to the upper term of eight years on count one, which was deemed the principal term. He was sentenced to the middle terms of five years each on the kidnapping convictions in counts 15 and 18. On count two, defendant was sentenced to a consecutive term of one year four months. Defendant was sentenced to six consecutive terms of eight months each on the false imprisonment counts (counts five, seven, eight, eleven, thirteen, and nineteen). He also received three consecutive terms of eight months each for the stalking convictions (counts 12, 14 and 17). The trial court stayed the sentences on counts three, four, six, ten, sixteen and twenty), pursuant to section 654. The total sentence, therefore, was 25 years and four months in state prison.

II

DISCUSSION

Admissibility of Prior Act Evidence

Defendant's key argument on appeal is that the trial court abused its discretion by admitting evidence of his prior acts. Acknowledging that Evidence Code sections 1108 and 1109 create exceptions to the general rule against admitting propensity evidence, defendant nonetheless claims that under Evidence Code section 352, the prejudice outweighed the probative value of the testimony of the three prior act witnesses.

“Evidence of a prior sexual offense is indisputably relevant in a prosecution for another sexual offense.’ [Citation.] In fact, it is precisely because such evidence is so highly probative that traditionally it has been subject to exclusion as improper character evidence in criminal trials. [Citation.] Recently, however, the

‘Legislature has determined that the policy considerations favoring the exclusion of evidence of uncharged sexual offenses are outweighed in criminal sexual offense cases by the policy considerations favoring the admission of such evidence. The Legislature has determined the need for this evidence is “critical” given the serious and secretive nature of sex crimes and the often resulting credibility contest at trial. . . .’ [Citations.]” (*People v. Yovanov* (1999) 69 Cal.App.4th 392, 403.)

Evidence Code section 352 gives the trial court discretion to exclude evidence “if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.” (§ 352.) We review the court’s ruling for abuse of discretion. (*People v. Williams* (1997) 16 Cal.4th 153, 197; *People v. Lucas* (1995) 12 Cal.4th 415, 448-449.) “Where, as here, a discretionary power is statutorily vested in the trial court, its exercise of that discretion ‘must not be disturbed on appeal *except* on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice. [Citations.]’ [Citation.]” (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124-1125; *People v. Cain* (1995) 10 Cal.4th 1, 33.) For purposes of analysis, “‘prejudicial’ is not synonymous with ‘damaging,’ but refers instead to evidence that “‘uniquely tends to evoke an emotional bias against defendant’” without regard to its relevance on material issues. [Citations.]” (*People v. Kipp* (2001) 26 Cal.4th 1100, 1121.)

People v. Harris (1998) 60 Cal.App.4th 727, offers some useful guidance in evaluating a case under section 1108. The court suggested the following factors were relevant to evaluating the admissibility of prior sex crimes under section 1108: the probative value of the evidence, especially as to the degree of similarity, the inflammatory nature of the evidence, the probability of confusion, the remoteness in time of the uncharged acts to the charged crime, and the consumption of time at trial.

(*Id.* at pp. 737-740; see also *People v. Rucker* (2005) 126 Cal.App.4th 1107, 1119 [using same criteria under Evidence Code section 1109].)

Overall, we find these factors, taken together, preclude a finding that the trial court abused its discretion. With respect to probative value, the evidence offered here was highly probative, almost to an unusual degree, particularly given defendant's defense of denial. "Evidence of a prior sexual offense is indisputably relevant in a prosecution for another sexual offense.' [Citation.]" (*People v. Yovanov, supra*, 69 Cal.App.4th at p. 403.)

The pattern presented by defendant's past dealings with women was obvious and stark, and the evidence was highly relevant to show defendant was predisposed to commit the crimes with which he had been charged. The nature of some of the acts showed obvious and notable similarities in the manner in which defendant behaved, such as his pattern of threats and intimidation, and the manner in which some assaults were committed. Indeed, reviewing the facts in their entirety, rarely has the evidence of a pattern been more obvious.

Defendant's acts showed a clear pattern of presenting himself as a pleasant, hard-working man to his victims. Once they showed any romantic interest in him, that interest quickly turned into jealousy and possessiveness, and even the suggestion that a victim had looked at another man was enough to send defendant into a rage. He demonstrated highly controlling behavior from one victim to the next, asserting as much control as he could, from whom his victims saw to when they were allowed to take showers. In some cases, the possessive, controlling nature led to violence and sexual assault. The probative value of the prior acts could not be more clear, or more obvious.

Further, while crimes of this nature are inherently upsetting, in the context of such crimes, the acts alleged were not so shocking or violent as to unduly inflame the passions of the jury, particularly a jury which had been selected with the nature of the charged crimes squarely in mind. And indeed, as respondent points out, the fact that the

jury found defendant not guilty of the most serious charge, kidnapping to commit sodomy, undercuts any argument that the evidence inflamed the jury's passions against him.

As to confusion, we do not find that likely in this case. The jury was instructed as to the use of uncharged sex offenses (properly, as we discuss below), the reasonable doubt standard, and the necessity of proof beyond a reasonable doubt. We find nothing in the record to suggest jury confusion.

With respect to the remoteness argument, defendant points out that some of the prior acts were some 13 years before the first charged offense. We keep in mind that courts have found that sexual offenses as old as 30 years may be admissible. (*People v. Branch* (2001) 91 Cal.App.4th 274, 284.) Thus, while somewhat remote, the acts are not automatically precluded on that ground. Remoteness as a grounds for exclusion also depends on defendant's behavior in the interim and how similar the past acts are to the current ones. (*Ibid.*) Both factors here weigh in favor of admissibility.

Further, we do not find that the testimony unduly consumed the court's time. The trial transcript is some 1720 pages (not including some additional 400 pages of voir dire), of which approximately 300 was the uncharged act testimony. Given the nature of the case, this does not strike us as unduly time-consuming.

We are further unpersuaded by any argument that the uncharged act testimony was unnecessarily cumulative or duplicative of the named victims' testimony. The fact that the victims corroborated each other does not mean the uncharged conduct was any less relevant or probative, or that it constituted "overkill." Indeed, given that there were seven witnesses ready to testify about the victim's uncharged acts, we find the trial court limited the testimony in a fair and reasonable way, designed to insure the rights of the defendant while at the same time allowing the prosecution to present its case. The testimony presented here did not undermine defendant's right to a fair trial, and thus, the trial court did not abuse its discretion by admitting the uncharged misconduct evidence.

Instructional Error

Defendant next argues that the trial court should not have instructed the jury with CALCRIM No. 375, the standard instruction on evidence of uncharged offenses used to prove identity, intent, common plan, etc. As given, the instruction read, in pertinent part: “The People presented evidence which may show the defendant committed other offenses that were not charged in this case. [¶] You may consider this evidence only if the People have proved by a preponderance of the evidence that the defendant in fact committed the uncharged offenses. . . . [¶] If the People have not met this burden, you must disregard this evidence entirely. [¶] If you decide that the defendant committed the uncharged offenses, you may, but are not required to, consider that evidence for the limited purpose of deciding whether or not: [¶] The defendant acted *with the intent or specific intent*² required to commit an offense charged in this case; [¶] The defendant had a motive to commit an offense charged in this case; [¶] The defendant’s actions in connection with any of the charged offenses were the result of mistake or accident; [¶] The defendant had a plan or scheme to commit the offenses charged; or [¶] The defendant reasonably and in good faith believed that alleged victims of the charged offenses consented. [¶] In evaluating this evidence, consider the similarity or lack of similarity between the uncharged offenses and the charged offenses. [¶] Do not consider this evidence for any other purpose except for the limited purposes described in Jury Instructions 852 and 1191 which follow. [¶] If you conclude that the defendant committed the uncharged offenses, that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that the defendant is guilty of the charged offenses. The People must still prove each element of every charged offense beyond a reasonable doubt.” (Italics added.)

² The pattern instruction reads simply “intent,” with directions to “insert specific intent required to prove the offense[s] alleged.”

He argues that “the trial court, in identifying the issues to which the uncharged [misconduct] evidence applied, gave an overinclusive misinstruction on the issue when it indicated the uncharged act evidence admitted under Evidence Code section 1101, subdivision (b) was admissible to prove the ‘intent or specific intent’ required to commit an offense charged in this case.” He then argues: “Hence, when a general intent crime is charged, uncharged prior evidence act cannot be used to establish or prove intent.”

In support of this contention, defendant cites *People v. Scheer* (1998) 68 Cal.App.4th 1009 (*Scheer*). In that case, the defendant was charged with felony hit and run and vehicular manslaughter, which are not specific intent crimes. (*Id.* at p. 1014.) The court found the admission of evidence that the defendant had previously fled from the police when they attempted to pull him over for running a traffic light to be harmless error. (*Id.* at p. 1017.) The court correctly noted: “Initially, we find the prior flight evidence was not admissible to show intent. ‘Evidence of *intent* is admissible to prove that, if the defendant committed the act alleged, he or she did so with the intent that comprises an element of the charged offense.’ [Citation.] Intent, which pertains to the defendant’s state of mind, is not an element of a general intent offense. The prior flight evidence was not admissible to show appellant’s intent since felony hit and run (Veh. Code, § 20001) is a general intent crime. [Citation.]” (*Id.* at p. 1019.) All that statement establishes, however, is that the defendant’s intent to commit felony hit and run is essentially irrelevant. The court ultimately found that any error in permitting the evidence of prior flight was harmless. (*Id.* at p. 1021.)

The correctness of jury instructions “is to be determined from the entire charge of the court, not from a consideration of parts of an instruction or from a particular instruction. [Citations.]” (*People v. Burgener* (1986) 41 Cal.3d 505, 538, disapproved on other grounds in *People v. Reyes* (1998) 19 Cal.4th 743, 753.) Given the entire charge in this case, we find no error. Defendant does not dispute that the jury was properly

instructed on the elements of each crime charged, including the intent required for each crime. The jury was also instructed with CALCRIM No. 303, informing them that certain evidence was admitted for a limited purpose and could be considered only for that purpose. “Jurors are presumed able to understand and correlate instructions and are further presumed to have followed the court’s instructions. [Citation.]” (*People v. Sanchez* (2001) 26 Cal.4th 834, 852.)

Further, even if the instruction was erroneous, it was harmless. Had the instruction been given as defendant now wishes, it is not reasonably likely that defendant would have received a more favorable outcome. (*People v. Anderson* (1987) 43 Cal.3d 1104, 1137.) The evidence against defendant was overwhelming, and we find no likelihood whatsoever that the jury improperly focused on the intent required for any of the charged crimes. Given our conclusion on this issue, we need not consider defendant’s argument regarding ineffective assistance of counsel.

False Imprisonment as a Lesser Included Offense

Defendant next contends that because the elements of false imprisonment are included in the offense of kidnapping, the false imprisonment conviction in count 16 should have been dismissed instead of stayed pursuant to section 654. Rather than discussing the facts, defendant relies on a comment made by the trial court during sentencing: “And then on Count 16, false imprisonment of Catherine A., I think the conclusion I come to is on the facts of the case that is subsumed under the 207 in count 15, so that eight month consecutive term is stayed pursuant to 654, because it is closely related to the charge in Count 15.”

A lesser included offense subsumed by the greater. “[I]f a crime cannot be committed without also necessarily committing a lesser offense, the latter is a lesser included offense within the former.” [Citation.]” (*People v. Reed* (2006) 38 Cal.4th 1224, 1227.) We agree with respondent regardless of the court’s choice of words, the

evidence shows that the kidnapping and the false imprisonment occurred at different times and places on the same day. The kidnapping occurred during the incident when defendant refused to stop the car on Interstate 15, and ended when he stopped at the gas station. The false imprisonment occurred later that day, when defendant refused to let Catherine leave the bedroom. In short, the kidnapping was no longer in progress when the false imprisonment began. Thus, it is not a lesser included offense, and the court did not err by staying the sentence pursuant to section 654 rather than dismissing this count.

Consecutive Sentencing

While acknowledging that this court is bound by the rule of law stated in *People v. Black* (2007) 41 Cal.4th 799, 820-821, defendant nonetheless argues that the consecutive sentences imposed on counts two, five, seven, eight, eleven, twelve, thirteen, fourteen, seventeen and nineteen violate his Sixth and Fourteenth Amendment rights to a jury trial and due process of law.

We disagree. The jury's verdict necessarily included the findings that defendant committed different crimes against different victims on different dates. Naming separate victims in separate counts is sufficient to justify the trial court's exercise of its discretion to impose consecutive sentences. (See California Rules of Court, rule 4.425; *People v. Caesar* (2008) 167 Cal.App.4th 1050, 1059-1060.) Further, as the Supreme Court has recently held, the Sixth Amendment does not apply to a trial court's decision to impose a consecutive sentence. (*Oregon v. Ice* (2009) 555 U.S. ___ [172 L.Ed.2d 517, 129 S.Ct. 711].)

III
DISPOSITION

The judgment is affirmed.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

O'LEARY, J.